

EX. E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

CONVOLVE, INC.) DOCKET NO. 2:08-cv-244
)
VS.) MARSHALL, TEXAS
) OCTOBER 12, 2010
)
DELL, INC., ET AL.) 9:00 A.M.

MARKMAN HEARING
BEFORE THE HONORABLE CHARLES EVERINGHAM, IV
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

MS. MARLA BUTLER
ROBINS KAPLAN MILLER & CIRESI
499 Park Avenue, Suite 1200
New York New York 10022
mrbutler@rkmc.com

MR. A. JAMES ANDERSON
ROBINS KAPLAN MILLER & CIRESI
950 E. Paces Ferry Rd., NE
2600 One Atlanta Plaza
Atlanta, Georgia 30326
janderson@rkmc.com

MR. ERIC M. ALBRITTON
ALBRITTON LAW FIRM
P.O. Box 2649
Longview, Texas 75606
ema@emafirm.com

FOR THE DEFENDANT WESTERN DIGITAL CORP.:

MR. BRUCE A. WESSEL
IRELL & MANELLA, LLP
1800 Avenue of the Stars
Suite 900
Los Angeles, California 90067
bwessel@irell.com

1 APPEARANCES (CONTD):

2 MR. H. KIP GLASSCOCK, JR.
ATTORNEY AT LAW3 550 Fannin, Suite 1350
Beaumont, Texas 77701
4 kipglasscock@hotmail.com5 MR. REYNALDO C. BARCELO
BARCELO & HARRISON6 2901 West Coast Highway
Suite 200
7 Newport Beach, California 92663

8 FOR THE DEFENDANT DELL, INC.:

9 MR. MICHAEL C. SMITH
SIEBMAN BURG PHILLIPS & SMITH, LLP10 P.O. Box 1556
Marshall, Texas 75671
11 michaelsmith@siebman.com12 MR. ROGER J. FULGHUM
MS. TAMMY PENNINGTON13 MR. BRADLEY BOWLING
BAKER BOTTS14 910 Louisiana, Suite 3000
One Shell Plaza
15 Houston, Texas 77002
roger.fulghum@bakerbotts.com
16 tammy.pennington@bakerbotts.com
brad.bowling@bakerbotts.com17 FOR THE DEFENDANTS HITACHI GLOBAL
18 STORAGE TECHNOLOGIES, INC. AND
HITACHI LTD.:

19 MR. DOUGLAS E. LUMISH

20 MR. JEFFREY G. HOMRIG
WEIL GOTSHAL & MANGES21 201 Redwood Shores Parkway
5th Floor22 Redwood City, California 94065
doug.lumish@weil.com

23 jeffrey.homrig@weil.com

24 COURT REPORTER:

MS. CHRISTY HUMPHRIES
108 S. BROADWAY AVENUE
25 TYLER, TEXAS 75702

1 specification that specifically addresses processor 73,
2 because this is an issue of contention between the
3 parties. With regard to processor 73, this is
4 specifically how the specification describes it. It
5 says, "This processor may comprise processor 25" --
6 which is the host processor, set forth above -- "or,
7 alternatively, a separate controller dedicated to the
8 disk drive which receives commands from processor 25."

9 So processor 73, which generates the
10 graphical user interface, can include -- because in the
11 law "comprise" means "include" -- can include processor
12 25 or it can be a separate processor on the disk drive.
13 Yet the Defendants are arguing that the patent
14 specification sets out two unique embodiments; one
15 embodiment with processor 25, the host processor,
16 generating commands and generating user interface of
17 the claims, and a separate embodiment where processor
18 73 on the disk drive generates these commands and
19 generates the user interface. Absolutely the
20 specification indicates that the user interface can be
21 generated on processor 25, processor 73 or both, and
22 the claims should not be limited in any way beyond
23 that.

24 The next term, Your Honor, "seek" --

25 **THE COURT: Where is processor 73**

1 located?

2 MS. BUTLER: Processor 73 is on the disk
3 drive. The figure that's on the screen, Your Honor, is
4 described -- Figure 10B is described as a close-up
5 view --

6 THE COURT: Of the disk drive.

7 MS. BUTLER: -- of the disk drive.
8 Processor 73 is indisputably on the disk drive.

9 The next term for construction, Your
10 Honor, "seek trajectory shape." The construction that
11 Convole is proposing is completely consistent with the
12 prosecution history, the specification and especially
13 the claims. The Defendants contend that it's
14 indefinite. And it's our position, Your Honor, that
15 the Defendants cannot meet that clear and convincing
16 burden of proving this claim element indefinite.

17 If I can first get to part of the
18 prosecution history -- this is actually from the first
19 reexamination that this -- all of these claims
20 survived. Figure 20A is from a prior art reference
21 called Koizumi, which throughout this case, Your Honor,
22 you will undoubtedly become very familiar with this
23 reference. Koizumi was before the Patent Office during
24 the original prosecution. The claims issued over it.
25 Koizumi was before the Patent Office for the first